

**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF REGISTERED NURSING MINUTES**

DATE: April 13, 2011

LOCATION: DoubleTree by Hilton Hotel Sacramento
2001 Point West Way
Sacramento, CA 95815
(916) 929-8855

PRESENT: Jeannine Graves, MPA, BSN, RN, President
Doug Hoffner, Vice President
Darlene Bradley, MSN, CNS, RN
Judy L. Corless, BSN, RN
Dian Harrison, MSW
Erin Niemela
Catherine M. Todero, PhD, MSN, ANP-C, RN
Kathrine M. Ware, MSN, ANP-C, RN

NOT PRESENT: Richard L. Rice (4/13 Teleconference only)

ALSO PRESENT: Louise Bailey, M.Ed., RN, Executive Officer
Don Chang, DCA Legal Council
Stacie Berumen, Enforcement Division Chief
Christina Sprigg, Administration Manager
Carol Stanford, Diversion Program Manager
Kathy Hodge, Enforcement Program Manager
Bobbi Pierce, Lead, Licensing Program
Janette Wackerly, NEC
Miyo Minato, NEC
Kelly McHan, NEC
Leslie Moody, NEC
Shelley Ward, NEC
Katie Daugherty, NEC
Kay Weinkam, NEC
Carol Mackay, NEC
Geri Nibbs, NEC
Kim Ott, Decisions and Appeals Analyst
Ronnie Whitaker, Decisions and Appeals Analyst
Laura Brann, Recorder
Julie Campbell-Warnock, Research Program Specialist
Linda Cabatic, Administrative Law Judge
Leslie Burgermyer, Deputy Attorney General
Anahita Crawford, Deputy Attorney General

Wednesday, April 13, 2011

1.0 CALL TO ORDER

J. Graves, Board President, called the meeting to order at 9:15 am and had the Board Members introduce themselves.

2.0 Public Comment for Items Not on the Agenda

Genevieve Clavreul, RN

3.0 Review and Approve Minutes:

➤ January 6, 2011, Board Meeting

MSC: Harrison/Corless that the Board approve minutes from January 6, 2011. 8/0/0

➤ February 2, 2011, Board Meeting

MSC: Harrison/Corless that the Board approve minutes with corrections from February 2, 2011. 8/0/0

4.0 Report on Board Members' Activities

Dian Harrison attended Sunset Review Hearing

Jeannine Graves attended Sunset Review Hearing, ACNL Conference

Catherine Todero participated with The California Nurse Leaders Group

Kathrine Ware attended Sunset Review Hearing, The Best Practices- Held by The First Lab Company

5.0 Board and Department Activities

5.1 Executive Officer Report

Louise Bailey presented this report

New Agency Secretary Appointed

On March 22, 2011, Governor Jerry Brown announced the appointment of Anna Caballero as the secretary for the State and Consumer Services Agency. Ms. Caballero has a great deal of experience in the public, private, and non-profit sectors. She served in the Assembly, been the Executive Director of a non-profit organization, served as Mayor of Salinas and as a Salinas City Council member, and practiced law in both private practice and in a non-profit setting. She began her new position on Monday, March 28th and is currently familiarizing herself with DCA and the other departments under SCSA.

Board's Budget Update

Proposed General Fund Loan

The BRN received an updated fund condition from the department dated February 17, 2011 showing a proposed \$15,000,000 loan to the general fund in FY 2011/2012, to be repaid in FY 2013/2014. If the Board's reserve drops below the projected 1.2 months in FY 2011/2012, the proposed loan amount will be adjusted accordingly.

Current Year AG Budget

The BRN's request to augment the Attorney General line by \$2.6 million and the Office of Administrative Hearings line by \$288,000 is still under manager's review at the Department of Finance. The augmentation request has been approved by the Department of Finance, and the notification letter has been sent to the Joint Legislative Budget Committee (JLBC). The JLBC has a 30 day review period.

Out of State Travel Blanket

Pursuant to Section 0760 of the State Administrative Manual, the department is required to prepare an annual Out-of-State Travel (OST) Blanket requesting approval for all anticipated trips for FY 2011/12. The BRN submitted its OST requests to the department on April 4, 2011. No travel was approved for the BRN in FY 2010/2011, and only 5 trips were approved for the entire department.

Department of Consumer Affairs (DCA) Updates

Sandra Mayorga has re-joined the Office of Human Resources (OHR). Sandra is assisting as the Interim Assistant Personnel Officer with emphasis on the customer service initiatives. This interim assignment will include direct management and oversight for the Classification and Pay; Transactions; Health and Safety; and Selections Services and Recruitment units.

Sandra brings an extensive Personnel Management background expanding over 20 years in HR, 14 of which were here at DCA in various capacities. She served as an Associate Personnel Analyst in the Personnel Office, Client Service Team, Staff Services Manager, Division of Investigation, Assistant Personnel Officer, the Personnel Officer and most recently the HR, Chief at the Department of Insurance.

BRN Office Relocation Update

DCA Facilities Management Unit continues to work with board staff to finalize the details of the BRN's move. The building lease has been signed and a purchase request for the modular furniture has been submitted. DCA Facilities Management Unit is currently working with vendors to organize the construction on the interior of the building. Staff is also working with the Office of Information Services and DCA Purchasing units to ensure all equipment needs will be met at the new location. It is anticipated that the move will take place mid 2011.

Board Member Orientation

In accordance with Business and Professions Code Section 453, Board Members are required to attend DCA's Board Member Orientation within one year of their appointment. The next Board Member Orientation is set for June 1, 2011, in Southern California and again on October 12, 2011 at DCA Headquarters in Sacramento from 9:00 am to 4:30 pm. Please notify the Administration Unit if you would like to attend either of the orientations.

Hiring Freeze Executive Order B-3-11/Freeze Exemption Request Budget Letter 11- 04

On February 15, 2011 the Governor's Office issued Executive Order B-3-11 regarding hiring restrictions to achieve necessary budget savings. The hiring restrictions includes all state agencies and departments and prohibits them from filling vacant positions regardless of the positions' funding source, except as provided in Executive order B-3-11. Specifically, appointments to state service, which includes new appointments, reinstatements, limited-term, temporary-authorization appointments, training and development assignments, retired-annuitant, seasonal employees, and permanent intermittent employee appointments would be

restricted. On March 4, 2011, the Department of Finance provided guidance through Budget Letter 11-04 which addresses the exemption request process and provides instruction on submitting individual and group exemption requests. At this time, the board has 48 vacancies, 34 CPEI positions and 14 non-CEPI positions. The BRN continues to advertise positions in light of the freeze and is trying to fill positions using the allowed departmental promotion and transfer method. The BRN is also reviewing the workload to determine the need for submission of exemption requests for vacant positions.

Fee Increase

The BRN implemented the new renewal fees that took effect with the March 31, 2011 renewal cycle. In February 2011, the BRN was notified by the DCA Office of Information Services that the March and April renewal notices were mailed out with the incorrect fee listed. The notices incorrectly listed \$85 as the renewal fee instead of the new \$140 fee that had gone into effect in January 2011.

This issue occurred because of a programming error in the Department of Consumer Affairs (DCA) computer system that generates the renewal notices. The processing of renewal notices is a function provided by DCA to its various Boards and Bureaus, including the Board of Registered Nursing. The error was corrected in February; however, approximately 26,000 licensees received the incorrect renewal notice. At that time, the BRN requested that the notices be resent with a letter to the affected licensee's explaining the error and providing direction on submitting the remainder of the fee, which is \$55. A licensee who submitted the incorrect \$85 renewals fee was processed and sent an underpayment notice for the remaining \$55. The licensees renewing in March and April that paid online were charged the correct amount.

The BRN has worked with the DCA Central Cashiering Unit to prioritize the processing of the underpayment fees and the BRN's internal cashiering office has also been diligently processing renewal fees as quickly as possible.

The BRN has taken the following steps to notify our licensee's of the error that occurred and to correct it:

- In those cases where nurses have said they are unable to work or need license verification, the BRN has sent letters to employers to let them know the individuals' licenses are clear and may continue to work. We will continue to do this for the licensees until this issue has been resolved.
- DCA has made processing the additional renewal payments of the affected nurses as top priority so that the March and April renewals can be processed just as quickly as possible.
- DCA has corrected the programming error, and additional quality assurance measures have been taken to ensure all renewal notices are correct before being mailed.

Due to the high volume of phone calls and emails regarding this matter, the BRN staff is diligently working at responding to all inquires as soon as possible.

FBI fingerprint audit and findings

On February 9, 2011, the BRN underwent a fingerprint process audit by the Federal Bureau of investigation (FBI). The purpose of the audit was to evaluate the BRN's compliance with policy requirements, associated with access to Criminal History Record Information (CHRI).

The FBI conducted an on-site review process, which included an administrative interview, to assess whether procedures used by the BRN were compliant with policy, and a sampling of CHRI was requested and submitted to the FBI for review. The areas of review included: Authorized Use of CHRI, Dissemination of CHRI, Applicant Notification and Record Challenge, Applicant Identity Verification, and Fingerprint Chain of Custody. The BRN was found to be compliant in all areas.

New Contract with UCSF

The BRN is currently working on a new 2-year contract with UCSF for Fiscal Years 2011 through 2013. Under the contract, UCSF will continue to complete the Annual School Survey and subsequent reports for the next two years, will complete the next scheduled biennial RN survey which will be sent out in 2012 and a subsequent report and forecasting report, and perform additional research projects. The additional projects planned at this time include an analysis of existing data related to diversity of California RNs to identify gaps in representation of racial/ethnic groups statewide and by region. Estimates of future diversity of the RN workforce will also be developed. Also planned in 2012-13 is a survey which will be sent to a sample of California RNs about their completion of advanced education, including possible barriers to pursuing additional education, knowledge about financial support and interest in advanced practice or faculty careers. The current contract with UCSF ends in June 2011.

Accreditation Forums

The Board of Registered Nursing has scheduled public forums to encourage and collect input regarding consideration of a proposed regional accreditation requirement for schools that provide or affiliate with prelicensure registered nursing education programs. These public forums are scheduled as follows:

- Tuesday, April 26, 2011 10:00-12:00 p.m.
Fresno State Building
Fresno, CA
- Tuesday, May 10, 2011 1:00-3:00 p.m.
State of California Office Building
San Diego, CA
- Tuesday, May 17, 2011 1:00-3:00 p.m.
Ronald Reagan State Building
Los Angeles, CA
- Tuesday, June 14, 2011 1:00-3:00 p.m.
Department of Consumer Affairs,
Hearing Room
Sacramento, CA

For additional information, please see the public notice on the Board's website at www.rn.ca.gov

Public Record Request

The BRN continues to comply with public record requests and responds within the required timeframes that are set in Government Code Section 6250. For the period of January 22, 2011 through April 1, 2011, the Board has received and processed 79 public record requests.

Board Member Correspondence

For the period of January 22, 2011 through April 4, 2011, the BRN received two letters addressed to Board Member(s). Both letters were related to disciplinary matters against registered nurses.

Personnel

The following personnel changes have transpired since the last Board Meeting:

New Hires	Classification	Board Program
Dennis Darrough	Program Technician II	Call Center

Promotion	Classification	Board Program
Bobbi Pierce	Staff Services Manager I	Licensing Program
Ronnie Whitaker	Staff Services Analyst	Decisions & Appeals
Laura Brann	Staff Services Analyst	Administration
Mario Zetter	Staff Services Analyst	Licensing Evaluation

Separations	Classification	Board Program
Chanh Nguyen	Key Data Operator	Licensing Support
Kathlyne Tran	Key Data Operator	Licensing Support
Anneli Wong	Staff Services Analyst	Licensing Evaluation

5.2 DCA Director's Report

LaVonne Powell presented the DCA Directors Report on behalf of Brian Stiger, Director

Freeze Exemptions

The Freeze Exemptions should be going over to Agency by the end of the week. Kim Kirchmeyer verified they are in the Executive Office, being reviewed at this time. I know that's a real concern for the Board.

Consumer Protection Enforcement Initiative

The Department is currently working on the third set of performance measures and hopes to post them to the DCA website by the end of April. Board Members will be able to familiarize themselves with complaint and disciplinary timelines by reviewing this information once posted. The Boards are requested to provide us with enforcement program updates and enhancements which maybe in place internally. This information will be useful to the Department as it compiles data for an extensive year-end enforcement report. This report will contain various timeline comparisons. The SB 1111 enforcement regulations and SB 1441 regulations, regarding substance abusing licensees, will help enhance your enforcement program. This was a topic at your Sunset Review Hearings which went extremely well. Congratulations!

The Substance Abuse Coordination Committee met Monday. Louise, after working diligently, has come up with a more balanced approach for a new drug testing standard.

Louise is on the sub-committee and also attended a committee meeting to present this approach which will allow the Board more discretion to gear the testing frequencies towards licensees, based on their particular circumstances.

Executive Order

An Executive Order, not directly affecting the BRN, is in regard to the reduction of vehicles and home storage permits. The BRN does not have vehicles, but uses those of the Division of Investigation. We've almost reached the percentage of reduction in our home storage permits. Our next challenge will be vehicle reduction.

We all know that to do an investigation out in the field, vehicles are required and we don't want to put more than one investigator per vehicle. There are many things to consider, but we have to justify each and every vehicle utilized. We feel we can do this, but it will be a challenge. We must assure that the investigators can respond quickly to all complaints; particularly those of high priority.

BREEZE

The DCA Director would like to thank the BRN for assisting in the BreEZe project. This system integrates ATS (Applicant Tracking System) and CAS (Consumer Affairs System). After opening the bidding process, we received one bid. The bid was higher than expected and we are participating in a process, through the Department of General Services, to negotiate that bid down to meet our needs. Miscommunications regarding some of the requirements may be causing the bid to be higher than anticipated.

6.0 Report of the Administrative Committee

Jeannine Graves, MPA, BSN, RN Chairperson

6.1 BRN study of California RNs on probation 2004-2005

Dr. Joanne Spetz, from University of California, San Francisco presented this report

The Board commissioned the University of California, San Francisco Center for the Health Professions to complete a study of 282 California RNs who either began or extended probation in 2004 and 2005. A draft of the complete report was provided to board members. The study researches characteristics of these nurses, the outcome of their probation and explores and evaluates what factors might affect the outcomes of remediation, including the likelihood of recidivism. This study was modeled after one conducted by the National Council of State Boards of Nursing (NCSBN) and published in 2009 in the American Journal of Nursing. A 29-item data extraction template was used to obtain data on the characteristics of the disciplined nurses, their employment settings, board actions, and remediation outcomes. A control group of nurses who had not been disciplined were used to compare data against the disciplined nurses.

The final report will be posted on the Board's website.

6.2 Summary of Findings of the 2010 Survey Report of California Active and Inactive RNs

Dr. Joanne Spetz, from University of California, San Francisco presented this report

The 2010 study is the seventh in a series of surveys designed to collect and evaluate nursing workforce data and identify trends that may assist policy makers and the public in addressing the nursing shortage and workplace issues. Prior studies were conducted in 1990, 1993, 1997, 2004, 2006, and 2008. Findings from the 2010 survey provide some indication of how the RN supply has responded during the economic recession.

The 2010 survey was conducted for the Board of Registered Nursing by the University of California, San Francisco (UCSF), Center for the Health Professions. Joanne Spetz, Ph.D., UCSF, served as the principal investigator for the study. Data analysis was performed by UCSF. Dr. Joanne Spetz presented a summary of the 2010 survey findings to the Board.

The final report will be posted on the Board's website.

6.3 Enforcement Regulation Proposals

G. Nibbs presented this report

- California Code of Regulations, Article 1, Section 1403, Delegation of Certain Functions
- California Code of Regulations, Article 2, Section 1410, Application
- California Code of Regulations, Article 4, Section 1441, Unprofessional Conduct
- California Code of Regulations, Article 4, Section 1443.6, Required Actions Against Registered Sex Offenders
- California Code of Regulations, Article 4, Section 1444.5, Disciplinary Guidelines

Public comment:

Kelly Green, CNA

Genevieve Clavreul, RN

MSC: Niemela/Harrison that the Board requests the Administrative Committee to address regulations in depth, the meeting will be noticed. Recommendations will be brought to the Board in June. The Board Members proposed a special meeting for regulatory proposal 6.3 to be added to the June 15, 16 upcoming Board Meeting as a single agenda item. 7/0/1.

6.4 American Nurses Association/California vs. Jack O'Connell et al.- Amicus Brief

Don Chang presented this report

At its last meeting the Board met in closed session to consider whether it would submit a friends of the court, or amicus curiae, brief on the behalf of plaintiffs ANA, in matter entitled American Nurses Association v. Jack O'Connell that is currently pending before the California Supreme Court. In accordance with polices of the Governor's, office state agencies desiring to submit amicus brief must first obtain the approval of the Governor's office. A request for approval to allow the BRN to submit an amicus brief was submitted to the Governor's office. The request was denied.

Appellant, the American Diabetes Association ("ADA"), and others filed a class action lawsuit against the California Department of Education, Superintendent of Public Instruction Jack O'Connell (together, "CDE") and others, claiming that California public schools violated the Americans with Disabilities Act, Section 504 of the Rehabilitation Act (Section 504) and the Individuals with Disabilities Education Act ("IDEA") for allegedly failing to ensure that students with diabetes received insulin when they need it at school. The case was settled and, pursuant to the settlement agreement, CDE issued "Legal Advisory on the Rights of Students with Diabetes in California's K-12 Schools" ("Legal Advisory") that summarized the seven recognized classes of persons who may legally administer insulin in California's schools, and added a new non-statutory category of people who could administer insulin to students ("section 8 of the Legal Advisory"). It provided that when no school nurse or other licensed person is available to administer

insulin to a student with diabetes, federal law authorizes an unlicensed school employee to do so.

Soon after the Legal Advisory was published, the American Nurses Association ("ANA") filed this action against CDE to prohibit enforcement of section 8 of the Legal Advisory as an unlawful regulation. The complaint also alleged that section 8 of the Legal Advisory was inconsistent with the Nursing Practice Act (Business and Professions Code section 2700 et seq -- "NPA") and the Education Code.

The trial court granted appellant ADA leave to intervene on the side of CDE and the California Nurses Associations ("CNA") and the California School Nurses Organization joined the ANA as plaintiffs.

The trial court concluded that only licensed health care professional or unlicensed persons expressly authorized by statute are permitted to administer insulin to students and rejected appellants arguments that the Education Code and its implementing regulations authorize unlicensed school personnel to administer insulin when they are not otherwise permitted to do so by statute. The trial court also concluded that federal disability laws do not preempt California law, which does not conflict with or impeded implementation of the federal requirements for the administration of insulin by qualified personnel. Rather, the statutes identify licensed health care professionals and certain unlicensed persons who are qualified to administer insulin, ruling out any basis for federal preemption.

CDE and ADA appealed. The Court of Appeal found in favor of respondents and affirmed the judgment of the trial court. The Court of Appeal determined: (1) The NPA affirmatively restricts unlicensed persons from performing the functions of a licensed nurse; (2) The injection of insulin into diabetic students falls within the administration of medications - a practice of nursing; (3) The Legislature's authorization of self administration (Ed Code section 49414.5©), the administration of insulin to foster children (Health and Safety Code section 1507.25(b), and the administration of insulin injection by licensed vocational nurses (section 28609.5(a)) are manifestations of the Legislature's decision to except these situation from the prohibition of the practice of nursing generally found in section 2725 of the NPA; (4) The exception of section 2727(e) of the NPA does not permit unlicensed school personnel to administer medications, including insulin, even though the student may have a prescription for those medications from his or her doctor; (5) The word "assist" in Education Code section 49423 means to help "in whatever way is legally permitted by the specific individual who is doing the assisting." (6) The word "assist in Education Code section 49423 recognizes that licensed health care professionals may legally administer medications to student but only authorizes unlicensed school employees to help students in ways that would not normally include the administration of medications; (7) When viewed as a whole, the legislature's affirmative enactments do suggest that the legislature has seen fit to authorize the administration of only a limited number of medication in limited situation to students by unlicensed school personnel; (8) Education Code section 49423 does not authorize unlicensed school personnel to administer the insulin injections that diabetic students may require pursuant to a section 504 plan or IEP; (9) California's legislative choice to protect the health and safety of the state's children who suffer from diabetes by limiting the administration of insulin injections at school to licensed individuals or expressly authorized individuals is an exercise of the state's traditional police power that triggers the presumption against preemption; (10) California law does not frustrate or stand as an obstacle to the purposes of the federal law in assuring students with disabilities free appropriate public education because schools can comply with both the federal law and the California law; (11) Section 8 of the CDE's Legal Advisory is invalid.

Current Status

On July 19, 2010, the ADA filed a Petition for Review with the California Supreme Court. On September 29, 2010, the Petition for Review was granted. On December 22, 2010, appellants filed their opening brief. On January 21, 2011, respondent ANA filed their answer brief. On January 28, 2011, the appellants ADA made a request for extension of time to file a reply brief to April 11, 2011. The CDE did not join in the Petition for Review and has not submitted a brief.

6.5 Uniform Standards Substance Abuse Regulations

Don Chang presented this report

A regulatory notice concerning the Uniform Standards Regarding Substance Abusing Licensees ("Uniform Standards") was published on March 9. A hearing has been scheduled to be held in conjunction with the Board's June 15 meeting in Ontario. One of the points of contention was the frequency of testing. As originally proposed, licensees who were disciplined because they were substance abusing licensees would be required to be tested at least 104 times per year. As proposed, the Board's regulations provided two alternatives for the testing. Alternative A adopted the Department's testing standard of 104 times per year. Alternative B adopted the BRN's current standard where the frequency of testing is dependent upon an individual case by case assessment of the licensee. Subsequently, the Director of the Department called a subcommittee meeting of the Substance Abuse Coordination Committee to reconsider the frequency of testing. The subcommittee recommended an alternative testing frequency of 52 to 104 times during the first year and 36 to 104 times thereafter subject to certain exceptions. This proposal was presented to the Substance Abuse Coordination Committee on April 11. The results of that meeting are known as of the date of this summary. The regulatory proposal consists of a new regulation that addresses the Uniform Standards and modifications to the Board's Disciplinary Guidelines which incorporate the Uniform Standards. The modifications to the Disciplinary Guidelines also include some housekeeping modifications to the Board's Disciplinary Guidelines. This regulatory proposal is still a work in progress and technical, grammatical and substantive modifications will likely occur as a result of further staff analysis and public comment.

6.6 Sunset Review Hearing and Recommendations

Louise Bailey presented this report

The Board's Sunset Oversight Hearing took place on March 14, 2011 before the Senate Committee on Business, Professions and Economic Development (the Committee). Board President, Jeannine Graves; Executive Officer, Louise Bailey; and Enforcement Division Chief, Stacie Berumen, provided testimony and answered questions before the Committee. The Committee had provided a list of issues and questions for the Board to address at the Hearing and also a Background Paper which included 25 issues and Committee Staff recommendations. The Board addressed some of these issues at the hearing and has 30 days from the hearing date to provide a written response.

Board staff has drafted responses to all 25 issues and recommendations and has provided this to the Board Members under separate cover. Once finalized, Board staff will submit the response to the Committee.

Public Comment:

Trisha Hunter, ANA-C

7.0 Report of the Legislative Committee

Richard Rice, Chairperson

7.1 Adopt/Modify Positions on Bills of Interest to the Board, and any other Bills of Interest to the Board introduced during the 2011-2012 Legislative Session.

Kay Weinkam presented this report

AB 30 Hayashi: Health Facilities: Security Plans
MSC: Niemela/Graves that the Board support AB 30. 7/0/2

Public comment:

Kelly Green, CNA

Katherine Hughes, SEIU National Nurse Alliance

AB 661 Block: Public Postsecondary Education: San Diego Community College
District: Baccalaureate Degree Pilot Program

MSC: Niemela/Corless that the Board Watch AB 661. 9/0/0

Public comment:

Trisha Hunter, ANA-C

AB 675 Hagman: Continuing Education

MSC: Niemela/Graves that the Board Oppose AB 675. 9/0/0

Public comment:

Trisha Hunter, ANA-C

Genevieve Clavreaul, RN

Kelly Green, CNA

Katherine Hughes, SEIU National Nurse Alliance

Information only:

SB 65 Strickland: Pupil Health: Prescription Pancreatic Enzymes

Per Kay Weinkam, Author decided not to move this bill in 2011; it will become a 2 year bill.

SB 161 Huff: Schools: Emergency Medical Assistance: Administration of
Epilepsy Medication

MSC: Niemela/Harrison that the Board Oppose SB 161. 9/0/0

Public comment:

Trisha Hunter, ANA-C

Kelly Green, CNA

Katherine Hughes, SEIU National Nurse Alliance

SB 393 Hernandez: California Association of Family Physicians, California
Association for Nurse Practitioners and others

MSC: Board of Registered Nursing: Refer back to committee

Public comment:

Brianna L. Hintze, California Association of Nurse Practitioners

Trisha Hunter, ANA-C

SB 538 Price: Nursing (Sunset Bill)
MSC: Niemela/Graves that the Board Support SB 538. 9/0/0
Public comment:
Kelly Green, CNA
LaVonne Powell, DCA Legal Council

SB 747 Kehoe: Continuing Education: Lesbian, gay, bisexual, and transgender
 patients
MSC: Hoffner/Bradley that the Board Oppose SB 747. 8/1/0
Public comment:
Trisha Hunter, ANA-C

SB 943 (Omnibus) Price: Committee on Business, Professions & Economic Development
MSC: Todero/Ware that the Board Support SB 943 (Omnibus). 9/0/0
No public comment

7.2 Information Only: Federal Legislation of Interest to the Board
Louise Bailey provided update.

A list of Federal Legislation impacting Nursing (currently going through Congress) will be placed in the Board Packet Material. No positions taken by the BRN. Organizations had requested that this information was made available for the public.

8.0 Report of the Diversion/Discipline Committee
Dian Harrison, MSW, Chairperson

8.1 Nursys Discipline Data Comparison (Scrub) Update
Stacie Berumen presented this report

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records.

Currently, 1,805 records have been reviewed on the active license list. Determination was made whether the cases warranted a request for the other state's discipline documents. This review resulted in 1,050 requests for out-of-state documents. The documents will be evaluated and a decision made as to the appropriate action needed.

Review of the inactive license spreadsheet is in progress and will continue until complete. Holds have been placed on 1,915 inactive records to alert staff when a nurse on the list attempts to activate their license. This alert will allow staff to immediately request and review the records to determine if out-of-state discipline documents are needed for possible action on the license.

The status of the documents reviewed:

Referred to the Attorney General	278
Pleadings Received	236
Notices of Defense Received	132
Referred to Cite and Fine	37
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	488
Settlement or Decision Pending	106

UPDATE:

The National Council of State Boards of Nursing (NCSBN), announced at its Annual Meeting a new process in development for non-licensure participating boards to participate in sharing discipline information. The NCSBN Board of Directors made the decision to allow modified member participation at their December 7-9, 2010 meeting. The Board of Directors met again on February 14-16, 2011, and decided there would be no fee charged for the modified member participation. NCSBN has submitted the contract to BRN Administrative Staff who are reviewing the language. Once the contract has been approved by all parties BRN/DCA information technology staff will begin the process to send all of our licensing data to NCSBN.

AG COSTS:

As of February 28, 2011, the BRN has expended \$466,762.50 to the AG's office on the Nursys Scrub cases.

No public comment

8.2 Internet Disclosure Policy – Enforcement Action

Stacie Berumen presented this report

The Board of Registered Nursing (BRN) began posting discipline information on its web site in 2006. This was done in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The BRN provides this information to better inform and protect California's health care consumers.

BRN provides information on the internet to indicate any disciplinary actions and their status through a series of codes from our legacy computer system. The discipline documents are added to support and explain actions taken.

In the last year, BRN staff has received requests to remove discipline documents from our website for a variety of reasons such as: it has been many years since the action was taken; the conviction included in the disciplinary action has been dismissed, expunged, or sealed; it hampers a licensee's ability to find employment; or the licensee is harassed by co-workers.

Enforcement staff has asked the committee and board members for a policy regarding discipline record retention on the internet.

FULL BOARD RECOMMENDATION ON SEPTEMBER 24, 2010:

Issue returned to the Diversion/Discipline Committee to create a policy for discipline record retention on the internet.

SUB-COMMITTEE RECOMMENDATION ON NOVEMBER 16, 2010:

Outside materials were not provided at the sub-committee meeting and were held over for next Diversion/Discipline Committee meeting for review and discussion.

COMMITTEE RECOMMENDATION ON JANUARY 5, 2011:

Provide the document prepared by DCA Supervising Legal Counsel, Don Chang, on December 30, 2010, to the full board for consideration and review at the January meeting.

FULL BOARD RECOMMENDATION ON FEBRUARY 2, 2011:

The board members requested staff prepare a series of options for consideration after reviewed and approved by DDC at their next meeting in March 2011.

BOARD OF REGISTERED NURSING PROPOSED INTERNET DISCIPLINE DOCUMENT RETENTION SCHEDULE						
Action / Time Record Retained	3 years from date of resolution	7 years from date of completion	10 years from date of completion	Indefinitely	Other	Staff Recommendation
Final Decision Upholding Citation and Fine Administrative Hearing	X					CCR 1435.15 requires purging of records 3 years after resolution
Final Decision resulting in Public Reprimand						At least 10 years from date of completion as compared to MBC
Final Decision resulting in Probation (with or without license suspension)						At least 10 years from date of completion as compared to MBC
Final Decision resulting in Probation (Tolled)						Indefinitely or at least 10 years from date of completion as compared to MBC
Final Decision resulting in License Revocation or Surrender						Indefinitely
Final Decision, Other						At least 10 years from date of completion as compared to MBC

NOTE: License status will remain on the BRN website indefinitely. All documents above are considered a public record and will always be provided if requested.

Refer to the Proposed Internet Discipline Document Retention Schedule (above) for the below motions:

MSC: Todero/Ware that the Board recommends a 3 year post on Final Decision resulting in Public Reprimand. 8/0/0

No public comment

MSC: Graves/Hoffner that the Board recommends a 10 year post on Final Decision resulting in Probation (with or without license suspension). 8/0/0

No public comment

MSC: Niemela/Graves that the Board recommends a 10 year post on Final Decision resulting in Probation (Tolled). 8/0/0

No public comment

MSC: All in agreement that the Board recommends Indefinite posting on Final Decision resulting in License Revocation or Surrender. 8/0/0

No public comment

MSC: All in agreement that the Board calls for additional research before vote for Final Decision. Other. 8/0/0

No public comment

8.3 Implementation of Uniform Standards relating to Substance Abuse and Disciplinary Guidelines

Stacie Berumen presented this report

The Board of Registered Nursing was tasked with implementing SB 1441. In order to comply with the mandate the BRN has been working with our DCA legal counsel to modify the Board of Registered Nursing's Recommended Guidelines for Disciplinary Orders and Conditions of Probation.

A regulatory proposal was sent to the Office of Administrative Hearings and was noticed to the public approximately two weeks after submission.

The proposed language changes will be provided under separate cover for review and discussion at the committee and upcoming board meeting. The plan is to hold a public hearing to obtain public comment on this matter at the June 2011 board meeting.

No public comment

8.4 Enforcement Program Update and Statistics

Stacie Berumen presented this report

PROGRAM UPDATE

Staff

In response to Executive Order, B-3-11 ordering a hiring freeze, DCA withdrew all exemption requests as a total package and has given each board and bureau the task of completing their own individual exemption requests customized to their specific requirements. However, we are waiting for the Department of Finance's paperwork requirements to request exemptions. Additionally, budgets is working with the Department of Finance to determine if DCA has already reached their required budget reductions so that our department, as a whole, would be exempt from the hiring restrictions. BRN has been charged with extremely strict case completion time frames yet we continue to lack the ability to fill the necessary, approved positions, or to backfill our existing vacancies.

Before the hiring freeze was instituted in February, we were fortunate enough to fill one of our two vacant OT/Support vacancies with Yadira Quintana, who transferred from Contractors State Licensing Board; and one of our new limited term Complaint Intake SSA positions with Lisa King, who transferred from the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation. In addition to her Complaint Intake duties, we plan to cross-train Lisa in serving accusations and processing final decisions to serve as back up to the only analyst we have doing these duties. Yadira has taken to her support duties in record time. Both employees have adapted well to our unit and are definite assets to our team.

We have been unable to fill the Cite and Fine AGPA position vacated by Shannan Borton on December 20, 2010, or the OT position vacated by Ed Montoya on January 3, 2011.

In anticipation of a hiring window, interviews were held in December for various positions which yielded several quality candidates. Unfortunately, the hiring window did not happen and we can only hope that these individuals will still be available if/when we are able to hire.

We continue to be very concerned that our three existing limited term staff will either be forced to leave state service or return to their previous positions since they will not be able to stay beyond their two year hiring period which will end within the next two months. We have exhausted all measures to keep these employees; however, with the hiring restrictions, we will most likely lose all three, leaving the Enforcement unit only 13.5 staff members, plus the program manager.

Kathy Hodge is attending the eight-session DCA Management Academy which will be completed on April 7. Several Enforcement staff attended the DCA Enforcement Academy the week of March 14-18.

Program

Until February 25, 2011, the Citation and Fine Program had been suspended for two months due to lack of available staff resources. In addition, with the loss of two of three OT/Support staff during Dec/Jan/Feb, the case analysts had to complete their own support staff tasks in addition to managing their cases, resulting in slower case movement and highly reduced follow-up with the Attorney General's office. In addition to her case management duties, Lorraine Clarke has stepped up and been trained to work the Cite and Fine desk as her time permits. We currently have 125 pending citations, many of which may result in informal citation conferences.

Approximately 850 license renewal holds have been placed on licensees for license expiration in March and April 2011, who have not complied with the retroactive fingerprint requirements and the BRN has no proof of submission. Enforcement will work with the fingerprint liaison in the Administration unit to add license renewal holds for all licensees who have not complied with the retroactive fingerprint requirements. We will also work to send out letters to these licensees in an effort to resolve the renewal holds before the licensee renews the license as time and resources permit.

We have been having work sessions with case analysts and complaint intake to go over complaint action criteria to ensure consistency in handling the various types of complaints.

BRN was audited by the FBI on February 9, 2011, and we are pleased to report we passed the audit. We learned that information being reported to DOJ from the FBI is filtered before it is sent to us. When the FBI reports criminal information to DOJ, federal law requires the individual state to confirm convictions prior to dissemination requesting agencies. This answers questions as to why we many times do not receive dates on FBI convictions. The FBI auditor was scheduled to audit DOJ the following day and address issues raised by BRN staff.

We are now receiving electronic billing information on a monthly basis from the Attorney General's office and are still working to determine where the money is being spent. We have grave concerns about the time spent and billed to the BRN as we have been told by AGO staff that their billing is based on a minimum billing amount of 15 minute increments. So we are billed 15 minutes for all emails read. All emails responded to are billed an additional 15

minutes, even if the email only takes 1-2 minutes to read or issue a response. That totals \$42.50 for each exchange of information.

The BRN Enforcement and Probation programs began preparing and serving default decisions coming out of the Oakland and San Francisco AG's offices as of December 25, 2010. Evaluation of the pilot project has been extremely limited as Enforcement has only received one qualifying default case since the pilot began. Staff has worked with Don Chang to define necessary documents to be included in the evidentiary packets and a process is in place for legal review and approval of all defaults prepared by both units. Due to the small number of defaults prepared during the pilot program we cannot make a determination whether it is appropriate to return all defaults to the BRN. We plan to ask for an extension of the pilot to give us an opportunity to collect more data to support the BRN resuming the responsibility of preparing defaults from all AG offices.

BRN Investigations

We only have two retired annuitant investigators actively working our cases in Northern California. The Department of Personnel Administration approved the use of the Special Investigator classification for the BRN in January 2011. However, we have not been allowed to hire for any of these positions. Because we only have the two retired annuitant investigators and the one BRN investigation analyst hired by the Probation Program we have changed our complaint intake review process by moving it back to the case analysts. All complaints determined to need formal investigation and prioritized as high or urgent are referred to the DOI regardless of whether the complaints meet the DOI case investigation criteria. Only routine case investigations are being held for BRN investigation.

We have sent 30 cases back to DOI which were reviewed by the NECs for focused investigations. An additional 116 of our oldest cases have also been sent back to DOI for investigation. DOI has met with Rico Stephan and Stacie Berumen to review and identify cases that will be returned to DOI for investigation. The BRN cases have been identified by zip code and can be referred back to offices who can handle the additional workload.

Statistics

As of February 28, 2011, there were 610 pending DOI investigations and approximately 500 pending BRN investigations. There were 1,205 cases pending at the AG's office which continues to be the highest ever. The BRN continues to be the AGO's biggest client, surpassing the Contractor's State Licensing Board.

From July 1, 2010 to February 28, 2011, enforcement served 673 accusations. Enforcement prepared nine (9) default decisions from July 1, 2010 to February 28, 2010, prior to the process returning to the AG's office on July 27, 2010.

Please review the old monthly enforcement report (attachment) which has additional breakdowns of information. The new report required to be submitted to the Deputy Director of Enforcement and Compliance will be included in the next committee packet due to quarterly reporting.

No public comment

CALIFORNIA BOARD OF REGISTERED NURSING ENFORCEMENT STATISTICS

February 28, 2011

STATISTICAL DESCRIPTION	2006-07	2007-08	2008-09	2009-10	2010-11	Projected FY 2010-11
Complaints Received	3,361	3,900	5,794	7,483	5,132	7,638
Consumer Complaints	2,499	2,781	3,323	2,190	1,923	2,885
Convictions/Arrests	862	1,119	2,471	5,293	3,209	4,814
Referred to Diversion Program	367	332	400	604	298	447
Division of Investigation (Sworn)-Assigned	580	816	582	484	458	687
Division of Investigation Closed	491	771	748	1,015	517	776
Division of Investigation Pending	1,291	1,336	1,170	641	604	
BRN Investigations (Non Sworn)-Assigned				58	29	44
BRN Investigations Closed				14	39	59
BRN Investigations Pending				40	37	
BRN Desk Investigations Assigned	2,645	3,140	5,650	7,865	4,818	7,227
BRN Desk Investigations Closed	1,975	2,319	3,519	7,116	4,643	6,965
BRN Desk Investigations Pending	829	928	1,677	1,887	1,921	
Criminal Actions Filed	7	23	22	21	3	5
Total Cite and Fine Citations Issued	17	35	115	181	61	92
Referred to Attorney General	314	436	515	766	822	1,233
Cases Pending at Attorney General	604	599	692	838	1,193	
Petitions to Revoke Probation Filed	44	74	59	91	33	50
Accusations Filed	336	404	359	696	673	1,010
Statements of Issues Filed	22	16	14	13	30	45
Total Pleadings	314	494	432	800	736	1,104
Orders to Compel Examination (Sec. 820)	5	6	4	4	6	9
Interim Suspension Order	3	1	2	8	3	5
PC23	2	4	8	6	5	8
Applicant Disciplinary Actions:						
(a) License Denied	19	17	15	27	30	45
(b) License Issued on Probation	15	10	4	9	4	6
Total, Applicant Discipline	34	27	19	36	34	51
Licensee Disciplinary Actions:						
(a) Revocation	101	121	131	243	169	254
(b) Probation	120	131	139	176	166	249
(c) Suspension/Probation	6	10	6	1	1	2
(d) License Surrendered	67	73	79	92	82	123
(e) Public Reprimand/Reproval	9	3	8	12	20	30
(f) Decisions Other	3	1	5	2	4	6
Total, Licensee Discipline	306	339	368	526	442	663
Process Used for Discipline (licensees)						
(a) Administrative Hearing	44	38	56	58	64	96
(b) Default Decision	76	101	105	206	134	201
(c) Stipulation	186	200	207	262	244	366
Total	306	339	368	526	442	663

*Fiscal Year to Date

8.5 Probation Program Update and Statistics

Stacie Berumen presented this report

PROGRAM UPDATE

Staff

The probation program has a vacant limited term Office Technician position and completed recruitment efforts to fill this position. With the limitations of only being allowed to hire DCA lateral transfer candidates, we did not receive any eligible candidates. The position has 18 months remaining of the 24 months allowed.

Program

The Probation Program staff completed the course design for the probation monitor training. This course will be comprehensive training to provide actual tools and knowledge for probation monitors state wide. The probation staff will provide a portion of the training on February 28 and March 1, 2011. Additionally, the probation staff will provide training at the third Enforcement Academy in March.

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records. Updates will be provided at each DDC meeting.

The Probation Program is assisting the Legal Affairs Division with the review and update of the Recommended Guidelines for Disciplinary Orders and Conditions of Probation. They were last revised in 2002 and are long overdue for cleanup and to incorporate recent legislative and regulatory changes.

STATISTICS

Below are the statistics for the Probation program from December 18, 2010 to March 9, 2011.

Probation Data	Numbers	% of Total
Male	106	24%
Female	330	76%
Chemical Dependency	247	57%
Probation Data	Numbers	% of Total
Practice Case	142	33%
Mental Health	3	<1%
Conviction	47	11%
Advanced Certificates	34	8%
Southern California	234	54%
Northern California	202	46%
Pending at the AG	79	18%
License Revoked	0	0
License Surrendered	5	1%
Terminated	5	1%
Completed	14	3%
Total in-state probationers	436	

No public comment

8.6 Diversion Program Update and Statistics

Carol Stanford presented this report

PROGRAM UPDATE

As a result of the Department of Consumer Affairs' recent legal decision requiring all board Diversion Evaluation Committees (DECs) meetings post the meetings on the respective board web sites, some participants have voiced concerns about coming to the meetings and continuing with their recovery. They are not sure what impact the information posted on the internet will have on their recovery program. Staff remains vigilant regarding participant apprehension to determine if it impedes the recovery of any participants. Subsequently, on February 10, 2011, seven students from one of the nursing schools attended a DEC meeting in the Bay area believing it was similar to a regular BRN board meeting. The DEC members and program manager took the opportunity to educate the students about the Diversion Program regarding the dangers of substance abuse and its correlation with stress in the nursing workplace. They were invited to return to the official DDC and board meetings in March and April 2011.

On March 16, 2011, First Lab provided a "Best Practices Conference" in Sacramento regarding substance abuse and drug testing. Dr. Donna Smith and Dr. Anthony Constantino, nationally recognized experts in this field presented. Dr. Donna Smith was instrumental in developing the Department of Transportation (DOT) national guidelines and Dr. Constantino is a published expert in forensic toxicology. The board members, DEC members, and BRN staff were invited to attend the training. An update will be provided at the next meeting.

On April 18, 2011, the program manager, Carol Stanford and program director, Virginia Matthews will be presenters at an education seminar sponsored by the Hospital Association of Southern California. This seminar will provide critical information regarding the BRN's Diversion Program and will be attended by Human Resources Executives/Directors/Specialists and Chief Nursing Officers/Executives who are aware that RNs are not immune from the disease of substance abuse and mental illness. A draft copy of the agenda is available upon your request.

Contractor Update

BRN staff along with other Program Managers from other boards attended HIPAA training sponsored by Maximus on January 11, 2011. The objectives of the training was to know what HIPAA is and understand the requirements for handling Protected Health Information (PHI); understand the Maximus policy on HIPAA and PHI; and understand individual's rights under HIPAA.

BRN began increasing drug testing in response to implementing SB1441. A review of trend data shows no significant increase in positive test results. Additionally, there does not appear to be any noteworthy increase in relapses over the past quarters. Virginia Matthews, Maximus Program Director, will present a brief report and overview regarding upcoming events and developments.

Diversion Evaluation Committees (DEC)

In a concerted effort to fill the six outstanding physician vacancies on our committees our staff sent over 300 letters out on February 23rd to physician members of the California Society of Addiction Medicine (CSAM). The physicians were invited to submit an application and resume to the BRN if they are interested in giving back to our health

communities by becoming DEC members for the BRN's Diversion Program. We immediately received positive responses to our request.

There are currently 12 vacancies as follows: four Registered Nurses, six Physicians, and two Public members. Recruitment efforts continue.

Statistics

Attached is the Monthly Statistical Summary Report for December 2010, and January, 2011. As of January 31, 2011, there were 1,528 successful completions.

BOARD OF REGISTERED NURSING			
DIVERSION PROGRAM			
STATISTICAL SUMMARY			
December and January			
	CURRENT MONTHS	YEAR TO DATE (FY)	PROGRAM TO DATE
INTAKES COMPLETED	24	99	4,195
INTAKE INFORMATION			
Female	20	74	3302
Male	4	25	893
Average Age	25-29		
Most Common Worksite	Hospital		
Most Common Specialty	Medical Surgical		
Most Common Substance Abused	Alcohol/Hydrocodone		
PRESENTING PROBLEM AT INTAKE			
Substance Abuse (only)	14	82	2,751
Mental Illness (only)	0	1	145
Dual Diagnosis	9	35	1257
Undetermined	1	1	42
REFERRAL TYPE*			
Self	10	32	1279
Board	14	64	2916
*May change after Intake			
ETHNICITY (IF KNOWN) AT INTAKE			
Asian	1	3	83
African American	0	2	131
Hispanic	1	8	158
Native American	1	1	29
Pacific Islander	1	2	16
Caucasian	20	83	3453
Other	0	0	59
Not Reported	0	0	266
CLOSURES			
Successful Completion	16	54	1538
Failure to Derive Benefit	0	0	102
Failure to Comply	6	8	914
Moved to Another State	0	0	51
Not Accepted by DEC	1	2	41
Voluntary Withdrawal Post-DEC	1	4	284
Voluntary Withdrawal Pre-DEC	3	10	402
Closed Public Risk	3	24	206
No Longer Eligible	0	2	19
Client Expired	0	1	37
TOTAL CLOSURES	30	105	3594
NUMBER OF PARTICIPANTS: 493 (as of January 31, 2011)			

No public comment

8.6.1 Committee Member Term Resignations

Carol Stanford presented this report

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in chemical dependency and/or mental health.

The following Diversion Evaluation Committee member has resigned for personal reasons. Her efforts will be recognized and a letter of appreciation will be mailed out.

RESIGNATION

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Rhonda Ceccato	Public	Oakland	13

No public comment

8.6.2 Diversion Evaluation Committee Members

Carol Stanford presented this report

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use and abuse disorders and/or mental health.

APPOINTMENTS:

Below are the names of candidates who were interviewed and are being recommended for appointment to the Diversion Evaluation Committees (DEC). If appointed, their terms will expire June 30, 2015.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Glen Weedeem	Physician	Burbank	8
Christopher Schaal	RN	Bay Area	2

REAPPOINTMENTS:

Below are the names of members who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Marshall Alameida	RN	Bay Area	2
Judith Morgan	Public	Oakland	13
Deborah Steele	RN	Fresno	5
Mary Hegarty	RN	San Jose	7
Fran Goodman	RN	San Jose	7
William Slavin	Public	Burbank	8
Cindy Simpson	Public	Santa Ana	14

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). If appointed, their terms will expire June 30, 2014

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Romana Zvereva	Physician	Los Angeles	3
Suzette Otlewis	Nurse	Orange County	4

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). If appointed, their terms will expire June 30, 2013

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Robert Rowden	Physician	Sacramento	1
Janis Jones	Nurse	Palm Springs	6
David Silverman	Public	San Jose	7
Sara Ohringer	Nurse	Burbank	8
Juan Martinez	Public	North Central	12
Barbara Leva	Nurse	Santa Ana	14

No public comment

MSC: Niemela/Hoffner that the Board Accept new DEC members. 8/0/0

9.0 Report of the Education/Licensing Committee

Catherine Todero, PhD, MSN, ANP-C, RN Chairperson

9.1 Ratify Minor Curriculum Revision

Leslie Moody presented this report

- California State University, Fullerton, Baccalaureate Degree Nursing Program, Entry Level Master's Degree Option
- Holy Names University LVN to Baccalaureate Degree Nursing Program
- Humboldt State University Baccalaureate Degree Nursing Program
- Loma Linda University Baccalaureate Degree Nursing Program
- University of California, Los Angeles, Baccalaureate Degree Nursing Program and Entry Level Master's Degree Nursing Program Option
- United States University Entry Level Master's Degree Program
- MiraCosta College Associate Degree Nursing Program
- Pacific Union College Associate Degree Nursing Program
- University of Phoenix Family Nurse Practitioner Program

Progress Report:

- Humboldt State University Baccalaureate Degree Nursing Program
- Simpson University Baccalaureate Degree Nursing Program
- Riverside Community College Associate Degree Nursing Program

MSC: Ware/Corless that the Board Accept Minor Curriculum Revisions and Progress Report. 9/0/0.

9.2 Continue Approval of Prelicensure Nursing Program

Leslie Moody presented this report

- National University Baccalaureate Degree Nursing Program

Major Curriculum Revision

- California State University, Sacramento, Accelerated Baccalaureate Degree Nursing Program Option
- California State University, Stanislaus, Accelerated Baccalaureate Degree Nursing Program Option

MSC: Ware/Harrison that the Board Approve Continuing Approval and Major Curriculum Revisions. 9/0/0

9.3 Partnerships with Out-of-State Online Registered Nursing Programs

Carol Mackay presented this report

The purpose of placing this item on the Education Licensing Committee agenda is to: review the history of these partnerships; the BRN legal authority for approving a partnership; the requirements for a partnership; and, the continuation of these partnerships in California.

History

The impetus behind these partnerships was the requests from out-of-state pre-licensure registered nursing programs that had students, who were living in California, enrolled in their online programs. These programs were interested in these students doing their required clinical nursing courses in their local communities.

In conjunction with this, the partnership model provided a mechanism for out-of-state nursing programs that did include clinical requirements/courses for its pre-licensure registered nursing program, to meet the California BRN requirements.

In 2006, the BRN approved the first partnership in California between Sonoma State University and Indiana State University. This partnership continues to operate today.

The second partnership in the San Diego and Glendale areas between the University of Oklahoma and San Diego State University is currently being phased-out. The last University of Oklahoma student cohort is scheduled to graduate from the Glendale area in May 2011. Currently, efforts are under way by two new programs to replicate this partnership.

Both of these out-of-state partnerships were BRN approved. BRN legal counsel provided input throughout the process. Details related to each partnership are documented in the Education Licensing Committee and BRN meeting minutes and packets.

Legal Authority

The California Board of Registered Nursing lacks jurisdictional authority to approve out-of-state prelicensure registered nursing programs.

Further, Section 2729 (a) of the California Nursing Practice Act states: *Nursing services may be rendered by a student when these services are incidental to the course of study of one of the following: A student enrolled in a board-approved prelicensure program or school of nursing.*

Based on the foregoing information, an out-of-state online prelicensure nursing program seeking clinical placements for its students in California was advised to establish a partnership (through a written agreement - Memorandum of Understanding) with a California BRN approved pre-licensure registered nursing program.

Partnership Requirements

There are multiple assumptions and requirements related to the Partnership - Memorandum of Understanding (MOU).

Pursuant to the MOU, the out-of-state students are permitted to take the out-of-state nursing program's clinical courses in California. These students are graduates of the out-of-state nursing program, and take the licensing exam as out-of-state graduates.

The out-of-state nursing program is held to the same standard as California nursing programs.

The following list describes the key requirements of the MOU with details of the role and responsibilities of the two academic institutions.

- 1) Both academic institutions are required to meet all applicable State and Federal laws and regulations, as well as health care facility requirements.
- 2) Both academic institutions are required to have Board of Nursing approval from their respective states, as well as comparable regional accreditation and accreditation by a nationwide professional nursing education organization. All approvals and accreditations must be in good standing.
- 3) The California BRN approved pre-licensure nursing program must obtain and maintain clinical facility agreements that meet CCR Section 1427 on behalf of the out-of-state partner.
- 4) The MOU must identify the mechanism that will be used to implement the partnership between the two academic institutions, for example simultaneous enrollment.
- 5) Only qualified students, as described in the MOU, will be placed in clinical facilities. These students will successfully complete evaluation of clinical skill sets in a clinical nursing laboratory prior to application in the clinical setting.
- 6) The MOU must provide the projected enrollments for the out-of-state nursing program. The out-of-state nursing students will not displace any existing relationship with any other nursing program as a result of this program.
- 7) The MOU describes the clinical courses and the instructional model to be used in the clinical area.
- 8) The out-of-state clinical courses using a traditional instructional model are required to establish faculty to student ratios consistent with CCR Section 1424 (k), not to exceed a maximum ratio of faculty member per 10 students.
- 9) The out-of-state clinical faculty members must: have an active, clear, current, California RN license; hold a master's degree or higher in nursing or related field; and meet BRN requirements for instructor-CCR Section 1425 (d).
- 10) An out-of-state preceptorship will meet California BRN Preceptor Guidelines incorporated into CCR effective October 21, 2010. All clinical preceptors used by the out-of-state nursing program will have California RN licenses in good standing and meet the BRN requirements for assistant instructors-CCR Section 1425 (e).
- 11) The out-of-state nursing program will provide a Clinical Education Director in California. The CED will have a California RN license in good standing and meet the BRN requirements for instructor-CCR Section 1425 (d)). The CED's responsibilities are further described in the MOU.
- 12) The MOU describes the California BRN's authority with respect to the academic partnership, specifically: initial and ongoing approval of the partnership; approval of enrollment projections; monitoring and reporting requirements; and, the ability to terminate a partnership.

Clinical Facility Agreements

- 1) The written agreement between the BRN approved nursing program and California-based health care facility must identify the academic partnership, and specify the out-of-state student population who will be placed at the facility pursuant to the agreement.
- 2) The written agreement must identify the ongoing responsibility of the BRN approved nursing program, as well as the responsibilities/delegated activities of the out-of-state nursing program.
- 3) The written agreement must meet CCR Section 1427 (c).
- 4) In addition to the Clinical Facility Approval Forms, each facility used by the partnership must: provide information on the current utilization of the facility by other nursing programs; and, provide a grid demonstrating placement of the out-of-state nursing students by term through implementation of all clinical nursing courses without displacement of existing nursing programs.

Next Steps

At this time, the BRN Partnership Model is being presented to the Board for two purposes: review of the legal authority for the Partnership Model in California, and to determine continuation of the Out-of-State Nursing Program Partnerships.

No public comment

9.4 Accreditation of Prelicensure Nursing Programs

Leslie Moody presented this report

At their February, 2011 meeting, the Board endorsed the Education/Licensing Committee's recommendation of scheduling four public forums at different locations (Sacramento, Fresno, Los Angeles, San Diego) to receive stakeholder input regarding the proposal to require regional accreditation for schools that provide or affiliate with a prelicensure registered nursing program.

Scheduling of public forums has been completed for all four locations, and public notices have been disseminated and also posted on the BRN website.

No public comment

9.5 2009-2010 Regional Annual School Reports

Julie Campbell-Warnock presented this report

The Regional Annual School Reports present the historical analyses of nursing program data from the 2000-2001 BRN Annual School Survey through the 2009-2010 survey for the nine economic regions in California. Each region has a separate report. All data are presented in aggregate form, and describe the overall trends in these regions over the specified periods. The data items addressed include the numbers of nursing programs, enrollments, completions, retention rates, student and faculty census information, simulation centers and student access to clinical sites and experiences.

The nine regions include: (1) Northern California, (2) Northern Sacramento Valley, (3) Greater Sacramento, (4) Bay Area, (5) San Joaquin Valley, (7) Central Coast, (8) Southern California I (Los Angeles and Ventura Counties), (9) Southern California II (Orange,

Riverside, and San Bernardino Counties), and (10) Southern Border Region. Counties within each region are detailed in the corresponding report. The Central Sierra (Region 6) does not have any nursing programs and was, therefore, not included in the analyses.

The San Francisco Bay Area Report (Region 4) sample is below.

Board of Registered Nursing Board Meeting – April 13, 2011

Education/Licensing Committee Agenda Item 9.5 2009-2010 Regional Annual School Reports Highlights/Data Comparisons from Previous Year (2008-2009)

- For the most part, the number of new student enrollments and spaces available in the Northern California area and Central Coast region has declined, and increased in the San Joaquin Valley region and Southern California area since last year. There are differences in new student enrollments by program type, while AD enrollment has declined in all but two regions, BSN enrollment has increased in all but three regions and ELM has either increased or remained steady in all but two regions.
- The number of qualified applications received has increased in five out of the nine regions and all but two regions (Central and Southern Border) have seen an increase in the number of qualified applications that they cannot accommodate compared to last year. The number of student spaces available in most regions has changed little from last year, except for the Southern California II region (Orange, Riverside and San Bernardino counties) which increased by 623 available spaces.
- Student completions in most of the regions had little change from last year, with the exception of the Bay Area (+105), and the three Southern California regions (Southern California I - +278, Southern California II - +429 and Southern Border - +181).
- Changes in retention rates from last year vary widely by region. Some saw a slight decline, while the Greater Sacramento region found a more significant decline (-14%). Other regions had slight increases while the Central Coast and the San Joaquin Valley reported higher increases (20.5% and 11.7%, respectively).
- Data on two new questions that were asked about denial of clinical placements and problems with student access showed some variation by region, but these do appear to be statewide problems. Student restrictions to clinical practice imposed on them by the clinical facility appears a more significant issue, with 100% of the schools in three regions (all in the Northern California area) reporting these problems. The Central Coast was the only region where no schools reported an issue with either of these issues.
- The most frequently reported reason for seven out of the eight regions where schools reported denial of clinical placements was competition for clinical space due to an increase in the number of nursing students in the region. In addition, in some regions, where there were differences in reasons reported by program type, in addition to the competition for space, BSN and ELM programs more frequently reported a decrease in patient census and AD programs more frequently reported the facility no longer

accepting AD students or facility seeking magnet status as a reason. Being displaced by another program, staff nurse overload, and nursing residency programs were also reasons frequently reported.

- The most common student restrictions to clinical practice reported by the schools in the seven out of eight regions that had encountered issues were access to the clinical site itself due to a visit from an accrediting agency, bar coding medication administration, and electronic medical records.
- Faculty vacancies continue to be an issue in most regions, with four regions (two Southern California area, one Northern California area and the San Joaquin Valley) reporting a 6.1% or greater vacancy rate. The vacancy rates range from a low of 1.6% in the Northern California region to a high of 8.1% in the Northern Sacramento Valley region.

No public comment

9.6 Licensing Program Overview and Statistics

Bobbi Pierce presented this report

The Board of Registered Nursing Licensing Program has been processing applications for January graduates wanting to take the NCLEX-RN. Schools are able to provide the Board with information for their graduates a minimum of 4 weeks prior to the graduation date; however, within the last month we have found that some schools are not submitting documentation until after the graduation date. From February 1, 2011 through February 22, 2011, we processed 145 applications for new graduates who attended California Nursing Programs.

The Licensing Program will be facing challenges this spring. We have the following vacancies: three Key Data Operators (KDOs); one Staff Services Analyst (SSA), the Office Services Supervisor II (OSSII) for the Support Unit and the Program Manager position. All positions are vital to maintain the workflow in the Licensing Unit. The KDOs create the new files that are then directed to the Evaluators for processing. The SSA evaluates and analyzes internationally educated applications. The OSSII supervises the Support Unit to ensure that applicant files are created and distributed to the Evaluators in a timely manner.

In anticipation of the increase in the number of applications the Board will be receiving for new graduates, a meeting was held with the Support Staff. The discussion was how to maintain the workflow with less staff. The determination was made that staff will be cross-trained in all of the existing duties so the processing and evaluating of applications will continue in an efficient and timely manner. The goal is to not create a backlog of applications.

Statistics:

The Department of Consumer Affairs, in conjunction with the Board, continues to provide statistical reports to the Governor's Office and the State and Consumer Services Agency on a monthly basis for the Licensing and Job Creation Report. This project has been on-going since January 2010 and the Board has been an active participant in meeting the goals of the

program to contribute towards California's job growth through expeditious and efficient processing of professional pending examination and licensing applications.

The statistics for the last two fiscal years and the first six and one-half months of Fiscal Year 2010/11 are attached. You will note that there is a decrease in the number of applications for examination, endorsement and repeaters during the last two fiscal years. It is believed that this is due to the economic slowdown and the Boards no longer accepting applications that do not include a United States Social Security Number.

Issues:

- Still receiving questionable transcripts and nursing licenses from the Philippines. For example: four applicants who attended the same nursing program had transcripts sent allegedly from their nursing school. The transcripts were questionable which prompted staff to contact the school. A response was received from an official at the school informing us that none of these four applicants attended that school.
- Another applicant began a nursing program in the Philippines. The applicant left the program in 2000 and returned in 2007. The documentation from the program shows that this applicant completed 136 hours of lectures and 408 hours of clinical practice. These hours were completed in 16 weeks, according to the documentation received from the school; however, the applicant was in the Philippines for only 24 days during this time period.
- Credits given for entire programs such as vocational nursing, nursing assistant and MD level to meet RN course work requirements. The student completes minimal theoretical and clinical course work prior to receiving the degree as a Registered Nurse.
- Modular distance learning programs offering self-directed and/or independent study. These students have only occasional interaction with an assigned tutor, and how, when and where the clinical practice is completed is questionable.
- Staff is looking more carefully at documents from a school in Indonesia. The education is being validated by a former school official. This person has not been affiliated with the school for at least the last three years.
- Still receiving applications from students who attended on-line programs offering degrees based on work and/or experiences and the degree is awarded in as little as 7 days. A transcript for an applicant who completed one of these programs was sent from a company based in the United Arab Emirates.

**CALIFORNIA BOARD OF REGISTERED NURSING
LICENSING STATISTICS**

DESCRIPTIONS	FISCAL YEAR 2008/09			FISCAL YEAR 2009/10			FISCAL YEAR 2010/11 7/1/2010 – 2/22/2011		
	APPS RECEIVED	**APPS PENDING	LICENSES & CERTS ISSUED	APPS RECEIVED	**APPS PENDING	LICENSES & CERTS ISSUED	APPS RECEIVED	**APPS PENDING	LICENSES & CERTS ISSUED
REGISTERED NURSE – EXAMINATIONS ENDORSEMENTS & REPEAERS	50,504	8,398	23,624	44,516	7,492	23,357	21,652	6,991	15,870
CLINICAL NURSE SPECIALISTS	246	13	216	240	27	204	136	39	133
NURSE ANESTHETISTS	142	1	129	139	4	124	110	16	109
NURSE MIDWIVES	38	0	45*	42	0	58	33	3	38
NURSE MIDWIFE FURNISHING NUMBER	37	0	35	37	2	32	11	2	13
NURSE PRACTITIONERS	817	0	804	937	8	854	554	82	671
NURSE PRACTITIONER FURNISHING NUMBER	704	2	680	670	7	598	418	97	430
PSYCHMENTAL HEALTH LISTING	9	1	6	5	1	4	5	3	3
PUBLIC HEALTH NURSE	2,148	95	1,997	2,538	129	2,373	1,644	145	1,775

*Nurse-Midwife applicants are often educated outside of the United States and must remediate course work prior to certification.

**Applications pending – Initial evaluation is complete; additional documentation required to complete file or applicant need to register with the testing service, Pearson VUE.

9.7 NCLEX-RN Pass Rate Update

Katie Daugherty presented this report

The Board of Registered Nursing receives quarterly reports from the National Council of State Boards of Nursing (NCSBN) about the NCLEX-RN test results by quarter and with an annual perspective. The following tables show this information for 12 months and by each quarter.

NCLEX RESULTS – FIRST TIME CANDIDATES

January 1, 2010 – December 31, 2010*/**

JURISDICTION	TOTAL TAKING TEST	PERCENT PASSED %
California	11,371	87.53
United States and Territories	140,883	87.42

CALIFORNIA NCLEX RESULTS – FIRST TIME CANDIDATES

By Quarters and January 1, 2010-December 31, 2010*/**

1/01/10- 3/01/10		4/01/10- 6/30/10**		7/01/10- 9/30/10		10/1/10- 12/31/10		10/01/10- 12/31/10	
# cand.	% pass	# cand.	% pass	# cand.	% pass	# cand.	% pass	# cand.	% pass
3,840	89.79	2,114	89.92	4,423	86.03	994	80.38	11,371	87.53

*Includes (9), (6), (6)& (2) “re-entry” candidates.

** 2010 NCLEX-RN Test Plan and a higher passing standard (-0.16 logits) were implemented April 1, 2010.

The Nursing Education Consultants monitor the NCLEX results of their assigned programs. Current procedure provides that after each academic year (July 1 – June 30), if there is substandard performance (**below 75% pass rate for first time candidates annually**), the NEC requests the program director submit a report outlining the program's action plan to address this substandard performance. Should the substandard performance continue in the second academic year, an interim visit is scheduled and a written report is submitted to the Education/Licensing Committee. If there is no improvement in the next quarter, a full approval visit is scheduled within six months. A report is made to the Education /Licensing Committee following the full approval visit.

California Board of Registered Nursing

NCLEX-RN Pass Rates First Time Candidates Comparison of National US Educated and CA Educated Pass Rates By Degree Type

Academic Year July 1, 2010-June 30, 2011

Academic Year July 1-June 30	July-Sept #Tested % Pass	Oct-Dec #Tested % Pass	Jan-Mar #Tested % Pass	April-June #Tested %Pass	2010-2011 Cumulative Totals
National US Educated- All degree types *	53,342 (84.8)	12,037 (81.7)			
CA Educated- All degree types*	4,425 (86.0)	994 (80.3)			
National-Associate Degree rates**	30,237 (84.0)	8,947 (79.9)			
CA-Associate Degree rates**	2,888 (86.0)	573 (78.5)			
National-BSN+ELM rates***	21,547 (85.8)	4,631 (83.8)			
CA-BSN+ELM rates***	1,530 (86.0)	419 (82.8)			

*National rate for All Degree types includes four categories of results: Diploma, AD, BSN+ELM, and Special Codes. Use of the Special Codes category may vary from state to state. In CA, the Special Codes category is most commonly used for re-entry candidates such as eight year retake candidates wishing to reinstate an expired license per CCR 1419.3(b). The CA aggregate rate for the All degree types includes AD, BSN+ELM, and Special Codes but no diploma program rates since there are no diploma programs in CA. CA rates by specific degree type exclude special code counts since these are not reported by specific degree type.

**National and CA rates reported by specific degree type include only the specific results for the AD or BSN+ELM categories.

*** Historically, ELM programs have been included in the BSN degree category by NCSEB.

Note: This report includes any quarter to quarter corrections NCSEB has made in data.

Source: National Council of State Boards Pass Rate Reports

10.0 Report of the Nursing Practice Committee

Judy Corless, BSN, RN, Chairperson

10.1 Information Only: Nothing Left Behind; speaker: Gayle Sarlatte, RN, CNOR

Janette Wackerly presented this report

At the January 5, 2011 Practice Committee meeting during public comment for items not on the agenda a representative of Operating Room Nursing Council suggested the committee be made aware of the new AORN 2010 Recommended Practice for Retained Surgical Items. Also, of interest is "Nothing Left Behind" a National Surgical Patient-Safety Project to prevent retained surgical items sponsored by a physician at University California San Francisco.

The committee liaison was contacted by the Operating Room Nursing Council who proposed two members who would present information on current safety issues and cutting edge technology related patient safety in the operating environment.

Nothing Left Behind

A National Surgical Patient-Safety Project to Prevent Retained Surgical Items, Verna C Gibbs M.D. Director, Nothing Left Behind, Professor Clinical Surgery UCSF, Staff Surgeon, SFOVAMC.

Perioperative Standards and Recommended Practices (July 2010). Recommended practice for sponge, sharp, and instrument counts providing guidance to perioperative registered nurses in preventing retained surgical items in patients undergoing surgical and other invasive procedures.

www.aorn.org/psrp

10.2 Registered Nurse Advisories

Janette Wackerly presented this report

At the Board's January 2, 2011 meeting, the Practice Committee was requested to have legal counsel review the following advisories for acceptance:

- Abandonment of Patients
- Nursing Student Workers
- Reproductive Privacy Act

Legal had the opportunity to review the Registered Nurse Advisories and provide changes as determined. The above advisories were reviewed by the practice committee.

Advisories were updated as follows:

Abandonment of Patient - addition of term "generally" added in bold.

Nursing Student Worker - no additions or changes.

Reproductive Privacy Act – additions are in bold.

MSC: Todero/Harrison motion to accept changes to advisories. 8/0/0

10.3 Nurse Practitioners Practice Advisories

Janette Wackerly presented this report

Legal had the opportunity to review the Nurse Practitioner Advisories and provide changes as determined. The below advisories were reviewed by the practice committee.

The advisories relate to Nurse Practitioner Practice:

- Clinic's Eligible for Licensure
- General Information: Nurse Practitioner Practice
- Nurse Practitioner in Long-Term Care

Advisory titled General Information: Nurse Practitioner Practice is based on the Nursing Practice Act and California laws enacted pertinent to nurse practitioner practice. The updating includes incorporation of previous advisories marked as deleted.

Nurse Practitioner in Long Term Care Settings was extracted from Welfare and Institutions Code and is on page 303-304 in the 2011 edition of the California Nurse Practice Act with Regulations and Related Statutes. The updating consisted of deleting the previous advisory NP in Long Term Care Setting.

Clinic's Eligible for Licensure was extracted from Health and Safety Code and is on page 241-243 of the 2011 edition of the California Nurse Practice Act with Regulations and Related Statutes. The advisory on clinics was added to NP advisories as it was not previously listed in the NP advisories.

MSC: Niemela/Ware motion to accept changes to advisories. 8/0/0

11.0 Public Comment for Items Not on the Agenda

No public comment

12.0 Closed Session

Disciplinary Matters

The Board will convene in **closed session** pursuant to Government Code Section 11126(c) (3) to deliberate on disciplinary matters including stipulations and proposed decisions.

Meeting adjourned at 3:15 pm. J. Graves, Board President, called the closed session meeting to order at 3:31 pm. The closed session adjourned at 5:55 pm.

Thursday, April 14, 2011 – 9:00 am

J. Graves, Board President, called the meeting to order at 9:05 am and had the Board Members introduce themselves.

13.0 Public Comment for Items Not on the Agenda

No public comment

14.0 Disciplinary Matters

Reinstatements

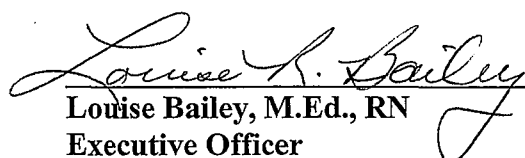
Carla Alsworth
Beverly Bolling (not present)
Mary Jo Brownell
Pamela Coney
Lucy Wacheke Mbugua-Alexander

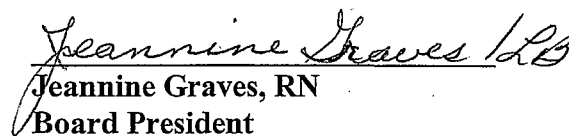
Termination of Probation

Carol Bucknam
Jennifer Landry
Olivia Sund

Decisions are pending until final orders are received from the Administrative Law Judge with the Office of Administrative Law.

Meeting adjourned at 12:15 pm. J. Graves, Board President, called the closed session meeting to order at 12:43 pm. The closed session adjourned at 3:17 pm.


Louise Bailey, M.Ed., RN
Executive Officer


Jeannine Graves, RN
Board President